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June 26, 1998

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VIA HAND DELIVERY

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, Room 814
Washington, D.C. 20554

**Re: MM Docket 91-58
Caldwell, College Station, and Gause, Texas**

Dear Chairman Kennard:

On behalf of Bryan Broadcasting License Subsidiary, licensee of KTSR, College Station, Texas ("KTSR"), we hereby respond to the letter filed on behalf of Roy E. Henderson, unbuilt permittee of KLTR, Caldwell, Texas, on June 11, 1998. In his letter, Mr. Henderson urges the Commission to move to a decision on Mr. Henderson's Application for Review in the above-captioned docket, and implies that KTSR is somehow responsible for delayed action in this proceeding. KTSR joins with Mr. Henderson in his hope that the Commission soon issues a final decision in this proceeding, but strongly disagrees with Mr. Henderson's suggestion that KTSR's actions have led to the current delay. In fact, it is has been Mr. Henderson's incessant appeals in this and related proceedings which have frustrated the efforts of KRTS, Inc. and Nicol Broadcasting, Ltd. to upgrade their own respective broadcast channels.

Specifically, first, in MM Docket No. 88-48, the Commission adopted a proposal to substitute Channel 297C3 for Channel 221A at College Station and modify KTSR's license to specify the higher-class channel. The Commission subsequently granted a construction permit to implement that change.^{1/} Mr. Henderson appealed both the allotment of 297C3 and the construction permit granted to KTSR to operate on that channel, however, and while these appeals were pending, KTSR was understandably unwilling to expend the resources necessary to construct these facilities.^{2/}

^{1/} See Public Notice, Report No. 20997 (November 28, 1990).

^{2/} The Mass Media Bureau's longstanding policy has been to consider pending appeals as a (continued...)

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By the time the Commission finally rejected Mr. Henderson's meritless claims in that proceeding,^{3/} KTSR had found an opportunity to pursue an even more substantial upgrade of its station by proposing an upgrade of KTSR from Channel 221A to Channel 236C2. This proposal was mutually exclusive with Henderson's proposal to upgrade his unbuilt station KLTR, Caldwell, Texas, from Channel 236A to Channel 236C2. Ultimately, the Allocations Branch of the Mass Media Bureau found Mr. Henderson's Caldwell upgrade proposal defective because it would not place a city grade signal over the entire community of Caldwell, and granted KTSR's proposal to upgrade to Class C2. The Commission has since granted KTSR a construction permit for operation on channel 236C2 in College Station.^{4/}

It is important to note (since Mr. Henderson does not) that KTSR's upgrade construction permits for channels 297C3 and 236C2 involve completely different technical facilities at completely different sites. While KTSR would certainly prefer to construct the higher-class Channel 236C2 upgrade, and is confident that its authority to do so will be upheld on appeal, it stands ready, willing, and able to construct the lower-class Channel 297C3 in the event its Channel 236C2 upgrade is overturned on appeal. It would be foolhardy, however, for KTSR to undertake construction of its Channel 297C3 facility when it has authority to build a higher-class facility at a different site. At the same time, KTSR -- as established Mass Media Bureau policy recognizes -- is justifiably wary of expending resources to construct its Channel 236C2 upgrade while the grant of that upgrade remains subject to appeal. In this regard, Mr. Henderson has continued for years in his effort to block KTSR's implementation of its proposal with meritless petitions appealing the Commission's decision. Mr. Henderson's Petition for Reconsideration was denied by the Commission,^{5/} but Mr. Henderson filed an Application for Review of this decision. Mr. Henderson also filed a Motion for Stay of the Commission's Order, even though the Commission had formally determined that it would no longer grant a stay in such circumstances. Although this Motion was rejected by the Commission, Mr. Henderson's Application for Review remains pending.

^{2/} (...continued)
circumstance outside the permittee's control that excuses nonconstruction. In fact, in its recent proposal to lengthen broadcast construction permits to three years and establish substantially more stringent standards for extensions, the Commission has proposed to retain pending or judicial appeals of the grant of a construction permit as one of two circumstances justifying an extension of time to construct. *See Notice of Proposed Rulemaking in MM Docket No. 98-43, FCC 98-57 (released April 3, 1998), para. 64.*

^{3/} *See Memorandum Opinion and Order, 8 FCC Rcd 4281 (1993); Memorandum Opinion and Order, 10 FCC Rcd 650 (1995).*

^{4/} *See Letter from James D. Bradshaw, Supervisory Engineer, Mass Media Bureau, to Bryan Broadcasting Lic. Subsidiary, FCC File No. BMPH-970124IA (March 20, 1998).*

^{5/} *See Report and Order, 10 FCC Rcd 7285 (1995).*

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Thus, it is due to Mr. Henderson's ongoing efforts that KTSR has still not yet been able to begin construction for operation on channel 236C2. While KTSR (which has provided service to College Station during the entire course of this proceeding) stands ready to expend the resources necessary to construct this facility, KTSR has yet to decide whether to risk the construction costs only to be later informed that the tower must be dismantled, in the unlikely event Henderson's Application for Review proves successful. Nor can KTSR risk construction of any facilities designed for operation on channel 297C3 -- such facility would become immediately obsolete when the Commission denies Mr. Henderson's Application.

In sum, despite Mr. Henderson's claims to the contrary, it is only due to delays caused by Mr. Henderson's relentless attempts to derail KTSR's efforts that the upgrade of KTSR has not been effectuated. Like Mr. Henderson, however, KTSR looks forward to an expeditious resolution of this proceeding.

Respectfully submitted,



David D. Oxenford
Stephen J. Berman

cc: By Hand Delivery:

The Honorable Harold W. Furchtgott-Roth, Commissioner
The Honorable Gloria Tristani, Commissioner
The Honorable Michael Powell, Commissioner
The Honorable Susan Ness, Commissioner

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